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SENATE BILL 1240
By Herron

AN ACT to amend Tennessee Code Annotated, Title 56, relative to disclosure of information by insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, is amended by adding Sections 2 through 12 of this act as a new chapter.

SECTION 2.

The obligations imposed by this act shall apply to an insurance institution, insurance representative or insurance-support organization which in the case of life, health and disability insurance:

(1) collects, receives or maintains information in connection with an insurance transaction which pertains to a natural person who is a resident of the state; or

(2) engages in an insurance transaction with an applicant, individual or policy holder who is a resident of the state.

SECTION 3. As used in this act the following words shall, unless the context otherwise requires, have the following meanings:

(1)

(a) “Adverse underwriting decision” means any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance representative to apply for insurance coverage with a specific insurance institution which the insurance representative represents and which is requested by an applicant; or

(iv) in the case of life, health or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions shall not be considered adverse underwriting decisions:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) “Applicant” means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(3) “Commissioner” means the commissioner of commerce and insurance or the commissioner’s designee.

(4) “Declination of insurance coverage” means a denial, in whole or in part, by an insurance institution or insurance representative of requested insurance coverage.

(5) “Individual” means any natural person who:

(A) in the case of life, health or disability insurance, is a past, present or proposed principal insured or certificate holder;

(B) is a past, present or proposed policy owner;

(C) is a past or present applicant;

(D) is a past or present claimant; or

(E) derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to regulation by the commissioner.

(6) “Insurance institution” means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s insurer, fraternal benefit society or other person engaged in the business of insurance, including health maintenance organizations, medical service plans and hospital service plans, preferred provider arrangements and managed care organizations. “Insurance institution” shall not include insurance representatives or insurance-support organizations.

(7) (A) “Insurance-support organization” means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or insurance representative for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance representative for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance representatives or other insurance-support organizations for the purpose of detecting or preventing fraud or material misrepresentation in connection with insurance underwriting or insurance claim activity.

(B) Notwithstanding the provisions of subdivision (A), the following persons shall not be considered “insurance-support organizations” for purposes of this act:

insurance representatives, government institutions, insurance institutions, medical care institutions and medical professionals.

(8) “Insurance representative” means an agent, broker, advisor, adjuster or other person engaged in activities involving insurance transactions.

(9) “Insurance transaction” means any transactions involving life, health or disability insurance which entails:

(A) the determination of an individual’s eligibility for an insurance coverage, benefit or payment; or

(B) the servicing of an insurance application, policy, contract or certificate.

(10) “Person” means any natural person, corporation, association, partnership or other legal entity.

(11) “Policyholder” means any person who:

(A) in the case of individual life, health or disability insurance, is a present policyholder; or

(B) in the case of group life, health or disability insurance which is individually underwritten, is a present certificate holder.

(12) “Termination of insurance coverage” or “termination of an insurance policy” means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

SECTION 4.

(a) In the event of an adverse underwriting decision, the insurance institution or insurance representative responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason for the adverse underwriting decision in writing or advise such person that upon written request such person may receive the specific reason in writing.

(b) Upon receipt of a written request within ninety (90) business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance

institution or insurance representative shall furnish to such person within twenty-one (21) business days from the date of receipt of such written request:

(1) the specific reason for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a); and

(2) the specific items of personal and privileged information that support such reason; provided, however, that:

(A) the insurance institution or insurance representative shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, or material misrepresentation; and

(B) specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by such individual and licensed to provide medical care with respect to the condition to which the information relates, whichever such individual prefers. Mental health record information shall be supplied directly to such individual, pursuant to this subsection, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates or of another equally qualified mental health professional. Upon release of any medical or mental health record information to a medical professional designated by such individual, the insurance institution, insurance representative or insurance-support

organization shall notify such individual, at the time of the disclosure, that it has provided the information to the medical professional; and

(3) the name and address of the sources that supplied items of information; except that a source that is a natural person acting in a personal capacity need not be revealed if confidentiality was specifically promised; provided, however, that the identity of any medical professional or medical-care institution shall be disclosed either directly to the individual or to the designated medical professional other than the one who initially supplied information, whichever such individual prefers.

(c) The obligations imposed by this section upon an insurance institution or insurance representative may be satisfied by another insurance institution or insurance representative authorized to act on its behalf.

(d) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (a) may be given orally.

SECTION 5.

(a) The commissioner shall have power to examine and investigate into the affairs of every insurance institution or insurance representative doing business in the state to determine whether such insurance institution or insurance representative has been or is engaged in any conduct in violation of this act.

(b) The commissioner shall have the power to examine and investigate into the affairs of every insurance-support organization acting on behalf of an insurance institution or insurance representative which either transacts business in the state or transacts business outside the state that has an effect on a person residing in the state in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this act.

SECTION 6. Whenever the commissioner has reason to believe that an insurance institution, insurance representative or insurance-support organization has been or is engaged in conduct in the state which violates this act, or if the commissioner believes that an insurance-support organization has been or is engaged in conduct outside the state which has an effect on a person residing in the state and which violates this act, the commissioner shall issue and serve upon such insurance institution, insurance representative or insurance-support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice, all in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 7. For the purpose of this act, an insurance-support organization transacting business outside the state which has an effect on a person residing in the state shall be deemed to have appointed the commissioner to accept service of process on its behalf; provided, however, that the commissioner causes a copy of such service to be mailed forthwith by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing shall be sufficient proof that the same was properly mailed by the commissioner.

SECTION 8.

(a) In any case where a hearing results in the findings of a knowing violation of this act, the commissioner may, in addition to the issuance of a cease and desist order, order payment of a monetary penalty of not more than one thousand dollars ($1,000) for each such violation; provided, however, that:

(1) in a hearing to which an insurance representative is a party, the monetary penalty imposed against such insurance representative shall not exceed ten thousand dollars ($10,000) in the aggregate for multiple violations; and

(2) in a hearing to which an insurance institution or insurance-support organization is a party, the monetary penalty imposed against such insurance institution or insurance-support organization shall not exceed fifty thousand dollars ($50,000) in the aggregate for multiple violations.

(b) Any person who violates a cease and desist order of the commissioner may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(1) a monetary fine of not more than ten thousand dollars ($10,000) for each such violation;

(2) a monetary fine of not more than fifty thousand dollars ($50,000) if the commissioner finds that such violation has occurred with such frequency as to constitute a general business practice; or

(3) suspension or revocation of an insurance institution's or insurance representative's license.

SECTION 9.

(a) If any insurance institution, insurance representative or insurance-support organization fails to comply with this act with respect to the rights granted hereunder, any person whose rights are violated may apply to any court of competent jurisdiction, for appropriate equitable relief.

(b) An insurance institution, insurance representative or insurance-support organization which discloses information in violation of this act shall be liable for special and compensatory damages sustained by the individual to whom the information relates.

(c) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(d) An action under this section must be brought within two (2) years from the date the alleged violation is or should have been discovered.

(e) Except as specifically provided in this section, there shall be no remedy or recovery available to an individual, in law or in equity, for an occurrence constituting a violation of any provisions of this act.

SECTION 10. No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing information in accordance with this act; provided, however, this section shall provide no immunity:

(1) for any person who discloses false information with malice or willful intent to injure any person; or

(2) for any person who misidentifies an individual as the subject of information and who discloses such misidentified information to others.

SECTION 11. An insurance institution or insurance representative shall provide a written notice of the rights established in this act to all applicants or policyholders at the time insurance coverage is requested, renewed or changed.

SECTION 12 . (a) It is an offense for any person to knowingly and intentionally obtain information about an individual from an insurance institution, insurance representative or insurance-support organization under false pretenses.

(b) A violation of this section is a Class E felony.

SECTION 13. This act shall take effect July 1, 1997, the public welfare requiring it.